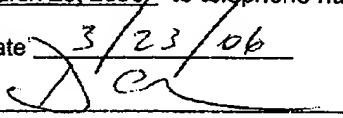


Reply Brief

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Duane C. Basch Reg. 34,545	

Attorney Docket No.

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE  
BOARD OF PATENT APPEALS AND INTERFERENCES**

Inventor/Appellant: **William H. Tew III**  
Application No.: **09/996,707**  
Filed: **November 30, 2001**  
Title: **Produce Handling Material**

Conf. No.: **3674**  
Group Art Unit: **1744**  
Examiner: **Mark Spisich**

Mail Stop: **Appeal Brief - Patents**

Honorable Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**REPLY BRIEF FOR APPELLANT**

This Reply Brief is being submitted in response to the Examiner's Answer dated January 24, 2006, in connection with the above-identified application.

*Reply Brief*

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**I. STATUS OF CLAIMS**

The Status of Claims remains as set forth in the Supplemental Appeal Brief submitted May 27, 2005.

Claims 1 – 19 and 22 - 26 remain rejected in the application. Claims 20 and 21 have been canceled. The rejection of claims 1 – 19 and 22 - 26 is appealed herein.

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## **II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

The Grounds for Rejection to be reviewed on Appeal remain as set forth in the Supplemental Appeal Brief submitted May 27, 2005, and as restated below. No new grounds for rejection have been set forth in the Examiner's Answer.

Claim 7 stands rejected under 35 U.S.C. §112, first paragraph.

Claims 15 and 19 stand rejected as being unpatentable under 35 U.S.C. §103(a) over the combination of Smith (2,635,267) in view of EITHER Zabron (5,906,269) OR JP6-246841.

Claims 15 and 19 stand rejected as being unpatentable under 35 U.S.C. §103(a) over the combination of Schnider (2,880,432) in view of EITHER Zabron (5,906,269) OR JP6-246841.

Claims 15 through 19 stand rejected as being unpatentable under 35 U.S.C. §103(a) over the combination of Ross (3,651,922) in view of EITHER Zabron (5,906,269) OR JP6-246841

Claims 15 through 19 stand rejected as being unpatentable under 35 U.S.C. §103(a) over the combination of Boyle (6,309,741) in view JP6-246841.

Claims 1, 6 – 11, 22, 24 and 26 stand rejected as being unpatentable under 35 U.S.C. §103(a) over the combination of Moore (2,195,371) in view of Ross (3,651,922) and further in view of EITHER Zabron (5,906,269) OR JP6-246841.

Claim 12 stands rejected as being unpatentable under 35 U.S.C. §103(a) over the combination of Moore (2,195,371) in view of Ross (3,651,922) and further in view of EITHER Zabron (5,906,269) OR JP6-246841 and further in view of Kurtz (3,242,008).

Claim 13 stands rejected as being unpatentable under 35 U.S.C. §103(a) over the combination of Moore (2,195,371) in view of Ross (3,651,922) and further in view of EITHER Zabron (5,906,269) OR JP6-246841 and further in view of Bowman (2,012,655).

Claim 14 stands rejected as being unpatentable under 35 U.S.C. §103(a) over the combination of Moore (2,195,371) in view of Ross (3,651,922) and further in view of EITHER Zabron (5,906,269) OR JP6-246841 and further in view of Butterworth (3,449,779).

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Claims 2 – 5, 23 and 25 stand rejected as being unpatentable under 35 U.S.C. §103(a) over the combination of Moore (2,195,371) in view of Ross (3,651,922) and further in view of EITHER Zabron (5,906,269) OR JP6-246841 and further in view of Newhall (2,534,205).

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### **III. ARGUMENTS**

Appellant incorporates herein arguments previously set forth in the Supplemental Appeal Brief submitted May 27, 2005.

#### **Rejection Under 35 U.S.C. §112, first paragraph (1st Question)**

In the Examiner's Answer it is urged that "nowhere is there any indication that the provision of the vinyl layer is to 'reduce absorption of moisture by the foam padding.'" Appellant respectfully urges that the quoted language of the Examiner's Answer confirms the application of an improper standard as the basis for the 35 U.S.C. §112, first paragraph rejection.

As MPEP 2163.02 sets forth, "[t]he subject matter of the claim need not be described literally (i.e., using the same terms or in *haec verba*) in order for the disclosure to satisfy the description requirement." Rather, the Examiner's burden of proof is to show why a person skilled in the art at the time the application was filed would not have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the application as filed. (MPEP 2163.04).

Applying the appropriate standard, Appellant again contends that the specification clearly indicates a problem where "a closed or open-cell foam padding is cut or scraped in use, the cells or openings that are exposed provide dark/damp surfaces that are prone to the growth of bacteria and fungi..." (p. 1, lines 22-27). From this one of skill in the art would have understood that abrasion of foam padding exposes cells (particularly in closed-cell foam) and further creates other openings that take in or hold liquid resulting in damp surfaces. Beginning at p. 9, approximately line 8, the Specification discusses the use of additives to reduce the likelihood that foams would allow propagation of microbes on surfaces and in "cuts or abrasions to the foam." The Specification then continues to describe a further improvement where high levels of abrasion are present – a flexible outer layer (vinyl) that withstands greater amounts of abrasion than the foam layer.

From these teachings, Appellant respectfully urges that one of skill in the art would clearly understand the relationship between abrasion resistance of a foam padding and the ability of the padding to take up liquid within the abraded cells and cuts. Therefore, the claimed limitation of "a flexible outer layer of vinyl to reduce the

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absorption of moisture by the foam padding" would have been understood to be within the inventor's possession at the time the instant application was filed. Claim 7 is, therefore, respectfully urged to meet the written description requirement of 35 U.S.C. §112, first paragraph, and the Board is urged to reverse the Examiner's rejection thereof.

**Rejections Under 35 U.S.C. §103 (2nd through 10th Questions)**

Claims 15 and 19 (2<sup>nd</sup> Question)

Claims 15 and 19 were rejected under 35 U.S.C §103(a) as being unpatentable over the combination of Smith (2,635,267) in view of EITHER Zabron (5,906,269) OR JP6-246841. Appellant respectfully submits that the rejection is improper, or in the alternative, fails to teach all of the limitations of the claims as set forth.

Smith is directed to an egg cleaning machine. While Smith does suggest foam rubber on certain surfaces, as acknowledged by the Examiner, Smith lacks any reference or suggestion to a problem with the growth of bacteria on the padded surfaces. Smith, therefore, fails to teach or suggest any motivation to consider the use of antimicrobial agents.

Zabron teaches construction of a multilayer conveyor belt having two woven scrims connected by the entanglement of staple fibers and needled binding members. The entire web is then encapsulated with an elastomeric material (e.g., yarn) to strengthen the connection between the scrims. Zabron suggests the use of an anti-microbial material in the elastomeric material of the belt. Zabron does not provide any teaching or suggestion of the use of a conveyor belt as a padding to mitigate the bruising of produce such as fruits and vegetables. Nor is there any reference to the washing of produce in conjunction with the conveyor belting.

Appellant respectfully contends that the Examiner has not met the burden of establishing *prima facie* obviousness because the rejection fails to set forth where the specific suggestion is found to combine the conveyor materials of Zabron with the machine of Smith. Rather, the Examiner resorts to conjecture to suggest that one of skill in the art, presumably from Zabron, would be motivated to add anti-microbial agents to all food contacting surfaces. Using this conjecture, the Examiner further urges that it would have been obvious to add such agents into padding and other portions of the Smith device.

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Absent a specific suggestion to combine, or even to suggest that an anti-bacterial material would be desirable in the padding of egg cleaning machine, Appellant contends there is simply no basis for the proposed combination. To apply the teachings of Zabron to materials other than the conveyor belting is an improper expansion of the scope of the Zabron teachings without a basis for such expansion. The mere fact that references can be combined or modified does not render the resultant combination obvious absent a suggestion of the desirability of the combination. The Examiner's improper construction of the obviousness rejection is further demonstrated where it is suggested that it is desirable to incorporate an antimicrobial agent "into any surface of a machine." (Final Action, p. 4). Such a misstatement should not be permitted as the foundation for the rejection.

Even considering, *in arguendo*, a combination of Smith and Zabron, the arguable combination fails to teach a stationary surface covered with a foam padding to reduce bruising of the vegetative produce, where the padding material is formed with an anti-microbial agent.

With regard to the Japanese publication #6246841, Appellant acknowledges the Examiner's inclusion of a translation with the Examiner's Answer. The publication is directed to an after-treatment of the foam surface with a solution of tin chloride, hydrochloric acid and an aqueous solution of silver nitrate into which a polyurethane foam material is subsequently dipped and rinsed. Moreover, the publication clearly indicates that the formation of foam products with anti-bacterial agents "are presumed to be insufficient." (bottom p. 3 – top p. 4 of translation).

Appellant notes that the translation provided does not suggest the use of the treated foam in contact with food articles of any type. Moreover, a reading of the translation does not even support the "refrigeration" use previously urged. Rather, the translation makes it clear that the proposed use is as "dust collectors for cleaners & air conditioners,..." (p. 3, [0003]). The Examiner now admits that there is no suggestion of the use of the disclosed material in contact with food or produce in Japanese publication #6246841. Nor does the Examiner's Answer state what basis is now relied on for the suggestion of obviousness. Rather, the Answer repeats the previous misstatement that "[it] would have been obvious ... to have incorporated such an agent into the foam pad (14a) of Smith to make it more sanitary." (Examiner's Answer; p. 4 bottom). This statement is inconsistent with the Japanese

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publication, as the publication teaches away from incorporating the agent in the foam and is clearly directed to a surface treatment by dipping. Absent some teaching or suggestion for such a use or at least to support the basis for the combination, it is clear that *prima facie* obviousness has not been established.

In view of the above, Appellant again respectfully requests that the Board overturn the rejection of claims 15 and 19 under 35 U.S.C. §103(a) over the combination of Smith in view of EITHER Zabron or JP Abstract/Publication #6246841. Appellant further urges that to the extent the remaining rejections rely upon the combinations of Smith in view of either Zabron or JP Abstract/Publication #6246841, such rejections must also be overturned for failing to establish *prima facie* obviousness.

Claims 15 and 19 (3<sup>rd</sup> Question)

Claims 15 and 19 were rejected as being unpatentable under 35 U.S.C. §103(a) over the combination of Schnider (2,880,432) in view of EITHER Zabron (5,906,269) OR JP6-246841. Appellant respectfully contends that the rejection is improper or, in the alternative, fails to teach all of the recited limitations of claims 15 and 19.

Schnider, like the Smith discussed above, is also directed to an egg cleaning machine. Schnider does suggest padding on certain surfaces but, as acknowledged by the Examiner, lacks any suggestion of the growth of bacteria or use of an anti-microbial agent on the padded surfaces.

Zabron, as noted previously, lacks any suggestion of the use of the belting treated by the biocidal or biostatic compounds (col. 6, lines 44-49) as a padding. Nonetheless, the rejection alleges that it would have been obvious "to have incorporated such an agent into any surface of a machine that directly contacts the food article to inhibit bacterial growth. Support for such a position is simply not found in the references relied upon for the rejection. Moreover, "incorporating such an agent into any surface" indicates that the agent is embedded **into** the material forming the surface and is not simply a surface coating as disclosed by the Japanese Publication #6246841 (as noted above teaches away from incorporating the agent in the material as being ineffective).

In view of the failure to show a basis for the proposed combination/modification in the references themselves, Appellant again respectfully requests that the Board overturn the rejection of claims 15 and 19 under 35 U.S.C. §103(a) over the combination of



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Schnider in view of EITHER Zabron or JP Abstract/Publication #6246841. Appellant further urges that to the extent the remaining rejections rely upon the combinations of Schnider in view of either Zabron or JP Abstract/Publication #6246841, such rejections must also be overturned for failing to establish *prima facie* obviousness.

Claims 15 through 19 (independently) (4<sup>th</sup> Question)

The fourth question is whether claims 15 through 19 are properly rejected as being unpatentable under 35 U.S.C. §103(a) over the combination of Ross (3,651,922) in view of EITHER Zabron (5,906,269) OR JP6-246841. Appellant respectfully submits that the rejection is improper, or in the alternative, fails to teach all of the limitations of the claims as set forth.

*Claim 15*

Ross teaches a live roller surface conveyor having pairs of rollers made of a resilient elastomeric foam whereby fruit is passed therebetween. The conveyor includes an infeed guide having a cushion arrangement to absorb the impact of fruit entering the hopper. Ross fails to specifically disclose the material from which cushion 118 is constructed. Contrary to the Examiner's assertions, the disclosure at the top of col. 3 is clearly related to the live feed conveyor rollers, and is not necessarily suggestive of similar materials for the padding 118 mentioned at col. 6. Appellant further notes that a similar padding appears at the top of Figure 3, yet a different fill pattern is employed in the illustration. Appellant, therefore, urges that reliance on a similar fill pattern for shading of component cross-sections as the basis to urge the same material at different locations to perform different functions in a multi-component system is without support, or is at best ambiguous as a basis for the rejection. At best such a representation is indicative of a "sponge rubber" pad pursuant to MPEP drawing symbol patterns (which are not mandatory – see e.g., MPEP608.02). Notably, Ross, like the prior primary references, fails to teach or suggest the use of antimicrobial agents in the padding materials.

Zabron, as previously discussed, does not provide any teaching or suggestion of the use of a conveyor belt as a padding to mitigate the bruising of produce such as fruits and vegetables. Nor is there any reference to the washing of produce in conjunction with the conveyor belting.

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Appellant respectfully contends that the Examiner has not met the burden of establishing *prima facie* obviousness because the rejection fails to identify where the suggestion is found to combine the conveyor materials of Zabron with the machine of Ross. Rather, the Examiner again resorts to conjecture to suggest that one of skill in the art would be motivated to incorporate anti-microbial agents into any food contacting surfaces. Using this conjecture, the Examiner further urges that it would have been obvious to add such agents into padding and other portions of the Ross device.

Absent a specific suggestion to combine, or even to suggest that an anti-bacterial material would be desirable, Appellant contends there is simply no basis for the proposed combination. The mere fact that references can be combined or modified does not render the resultant combination obvious absent a suggestion of the desirability of the combination.

With regard to the Japanese Abstract/Publication #6246841, as noted above, the publication is directed to coating a foam material by dipping. The publication also does not suggest the use of the treated foam in contact with food articles of any type. Even the prior reliance on the term refrigeration in the abstract appears to be direct to air-conditioning and, therefore, would not be an obvious combination with the food handling machine of Ross.

Appellant further urges that one of skill in the art would actually be disinclined to use the material or treatment described in Japanese Abstract/Publication #6246841 in combination with Ross as Ross clearly indicates the possibility of a wet environment and the described agents of the JP abstract all appear to be aqueously applied. Hence, Appellant respectfully contends that *prima facie* obviousness has not been established, and requests that the rejection of claim 15, and claims depending therefrom, be reversed.

*Claims 16, 17, 18*

With respect to claim 16, neither Zabron nor Ross suggest what type of padding might be employed on a stationary surface, much less a closed-cell padding as recited in claim 16. Notably, later in the Examiner's Answer (p. 16) the Examiner acknowledges that "for argument sake" Ross may not disclose foam padding. As to the assertion that such a material is taught by Ross at col. 3, lines 4-13, the

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referenced description is directed to the “conveyor feed rollers 18,” and no description is indicated relative to the padding material.

Claim 17 further limits the foam padding set forth in the claim by reciting that the padding “includes a continuous yet flexible outer layer.” As the alleged basis for teaching such a limitation, the Examiner relies on Ross, and the teaching of a “pliable wear sleeve 89” (col. 4, lines 54-55). However, reading of this description in context clearly shows the pliable wear sleeve is an element depicted only with respect to the roller conveyor elements. No such suggestion is found to use the pliable wear sleeve on other padding elements.

Similarly, claim 18, dependent from claim 17, further recites that the continuous outer layer is a vinyl layer formed with an anti-microbial agent. Absent a teaching of such a limitation the Examiner urges that it would be an obvious design choice. However, no support for such an assertion is provided. Appellant respectfully contends that the rejection of claims 15 through 19 should be reversed.

Claims 15 through 19 (5<sup>th</sup> Question)

Claims 15 through 19 were rejected as being unpatentable under 35 U.S.C. §103(a) over the combination of Boyle (6,309,741) in view JP #6-246841. Appellant respectfully submits that the rejection is improper, or in the alternative, fails to teach all of the limitations of the claims as set forth.

Boyle does teach the use of FDA approved closed cell foam padding for use in a shopping cart for the comfort of children or to protect fruits and vegetables from bruising. However, Appellant has previously noted that Boyle clearly teaches away from the use of any anti-microbial agents, where it states at col. 2, lines 53-55 that “[t]he full skin surface can prevent the infiltration of water, fungus and bacteria and enable the pad to be easily cleaned with soap, steam or disinfectants” (col. 2 line 54-56). Boyle further goes on to say that cleaning is necessary to remove urine stains and fecal matter from a child. (col. 2 line 59). In response to Appellant’s showing that Boyle teaches away from a need for an anti-microbial agent within the foam or surface cover, the Examiner has improperly urged Appellant’s claimed invention (or at least aspects thereof) to support the propriety of the alleged combination of Boyle with Zabron or the Japanese publication. This is an improper use of the present invention as the “recipe” by which the unrelated references are proposed as an obvious combination – particularly when Boyle clearly teaches that any concern

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relative to bacteria etc. can be addressed by cleaning! Notably, the present invention, directed to a produce handling machine, requires a stationary vegetative produce-contacting surface with an anti-microbial agent formed in padding on the surface.

In view of the failure to show a basis for the proposed combination/modification in the references themselves, Appellant again respectfully requests that the Board overturn the rejection of claims 15 and 19 under 35 U.S.C. §103(a) over the combination of Boyle in view of EITHER Zabron or JP Abstract/Publication #6246841. Appellant further urges that to the extent the remaining rejections rely upon the combinations of Boyle in view of either Zabron or JP Abstract/Publication #6246841, such rejections must also be overturned for failing to establish *prima facie* obviousness.

Claims 1, 6 – 11, 22, 24 and 26 (independently) (6<sup>th</sup> Question)

Claims 1 and 6-11, 22, 24 and 26 were rejected 35 U.S.C. §103(a) over the combination of Moore (2,195,371) in view of Ross (3,651,922) and further in view of EITHER Zabron (5,906,269) OR JP6-246841. Appellant respectfully submits that the rejection is improper, or in the alternative, fails to teach all of the limitations of the claims as set forth. The arguments presented above relative to the combination of Ross in view of Zabron or the Japanese Publication are also incorporated herein.

*Claim 1*

Moore teaches a potato washing and drying machine, however, Moore lacks any teaching or suggestion for the use of padding to prevent bruising on elements within the apparatus. Moore, like Ross, also does not teach or suggest any concern relative to contamination from microbes, bacteria or the like.

Ross, as previously noted, does contain a reference to a cushion, however, there is no teaching as to the construction, operability and characteristics of such a cushion. The Examiner acknowledges “for argument sake” (p. 16) that Ross may not disclose foam padding, but then suggests that it would have been obvious to use such a material. No basis is set forth to support such a conclusion.

In spite of the noted failures of Moore and Ross, the Examiner's Answer nonetheless suggests that “it would have been obvious to provide “such an agent into such a padding” in view of Zabron or JP Abstract/Publication #6246841 – notably, neither

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suggests use in foam padding. As noted in Appellant's Brief, a piecemeal reconstruction of the prior art patents in light of the claims, or the mere fact that the prior art devices could have been modified, does not make the combination or modification obvious unless the prior art suggested the desirability of such a modification. Hence, it remains Appellant's position that the Examiner has failed to set forth any support in the references themselves for the proposed combination or modification, and that *prima facie* obviousness has not been established.

#### *Claims 6-11*

Appellant respectfully contends that dependent claims 6 – 11 were improperly rejected for the reasons discussed above relative to claim 1, and are also patentably distinguishable over the arguable combination for the reasons set forth in Appellant's Brief on Appeal.

#### *Claims 22 and 24*

Claims 22 and 24 each set forth a specific limitation relative to the type of material to be employed as the antimicrobial agent. In the Final Office Action, the rejection was based upon the combination of Moore (2,195,371) in view of Ross (3,651,922) and further in view of EITHER Zabron (5,906,269) OR JP6-246841. However, the rejection of claims 22 and 24, and the Examiner's Answer do not identify a teaching of the particular agent set forth in claims 22 or 24. Rather, the Examiner urges that the agents claimed are obvious. Appellant maintains that such a rejection is, therefore, incomplete and fails to establish *prima facie* obviousness to which Appellant can or must respond. Accordingly, the Board is respectfully requested to reverse the rejection of claims 22 and 24.

#### *Claim 26*

In claim 26, Appellant sets forth a limitation as to the thickness of a foam pad as recited in claim 1. Absent a teaching of the recited thickness, the Examiner resorts, in the Examiner's Answer, to posing a question to Appellant as to the thickness of a pad disclosed by Ross. If the Examiner's question cannot be answered by simply referring to Ross, then Appellant cannot understand how Ross can provide any basis for the rejection of claim 26. Appellant previously noted that the claimed limitation (Specification; p. 9) would be operable with respect to the various embodiments

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depicted. Absent any teaching of the recited thickness, Appellant respectfully urges that *prima facie* obviousness has not been established, and requests that the Board overturn the rejection of claim 26.

Appellant wishes to further note that it is the Examiner's burden to establish *prima facie* obviousness to which Appellant can or must reply. Appellant set forth, at p. 9 of the Specification, the range of thicknesses that achieved the desired protection of produce. In view of the Examiner's inability to establish that any of the references relied upon teach the recited limitations as to the foam padding, Appellant respectfully urges that the burden of overcoming the rejection does not yet lie with Appellant. Appellant further submits that the rejection is improper, or in the alternative, fails to teach all of the limitations of the claims as set forth.

Claim 12 (7<sup>th</sup> Question)

The next question presented is whether claim 12 was properly rejected as being unpatentable under 35 U.S.C. §103(a) over the combination of Moore (2,195,371) in view of Ross (3,651,922) and further in view of EITHER Zabron (5,906,269) OR JP6-246841 and further in view of Kurtz (3,242,008). Appellant respectfully submits that the rejection is improper, or in the alternative, fails to teach all of the limitations of the claims as set forth. The arguments presented above relative to the combination of Ross in view of Zabron or the Japanese Publication are also incorporated herein.

Kurtz generally involves the washing and drying of eggs and more specifically a means to remove the water from the shell of the egg.

Appellant respectfully urges that It is incumbent, in setting forth a *prima facie* obviousness rejection under 35 U.S.C. §103(a) to show where the proposed teaching or suggestion for a combination or modification is found in the cited references. No such teaching or suggestion has been identified. Rather, the Examiner states that "[o]nce it is established in the art of including an antimicrobial agent into a food contacting surface, it would be obvious to one of ordinary skill to include such an agent into any portion of a handling machine which contacts produce." Here again, the Examiner provides no basis to show where it is taught or suggested that an antimicrobial agent should be included in any portion of a machine which contacts produce. Absent such a teaching, it is apparent that *prima facie* obviousness has not been established.

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Moreover, even if the proposed modification to add the Kurtz curtain to the Moore washer were suggested, there remains no teaching or suggestion to make such a curtain with an anti-microbial agent as specifically recited in claim 12. Clearly, Appellant's disclosure is again being used as a "recipe" for selecting portions of the prior art to construct the claimed invention. It is clear that the combination of patents does not suggest that the modifications urged by the Examiner be made. Accordingly, claim 12 is urged to be allowable and the Board is respectfully requested to reverse the rejection thereof.

Claim 13 (8<sup>th</sup> Question)

Claim 13 was rejected as unpatentable under 35 U.S.C. §103(a) over the combination of Moore (2,195,371) in view of Ross (3,651,922) and further in view of EITHER Zabron (5,906,269) OR JP6-246841 and further in view of Bowman (2,012,655). Appellant respectfully submits that the rejection is improper, or in the alternative, fails to teach all of the limitations of the claims as set forth. The arguments and discussion set forth above relative to claim 1 are incorporated herein by reference.

Claim 13, dependent from claim 1, further recites that the vegetative produce washer further comprises "scrubber rubber produced with an anti-microbial agent to provide resistance to the growth of microbes thereon." Bowman teaches the use of rubber spurs (5) to dislodge scale on the surface of certain fruits. Bowman is notably lacking any reference to washing with the use of water, nor is there any suggestion that microbial contamination of the Bowman equipment is a problem. Accordingly there would be no reasonable expectation that Bowman would have motivation to utilize a washer with a scrubber rubber produced with an anti-microbial agent, as recited.

In response to the Examiner's Answer remarks (p. 18), Appellant notes that the Examiner's premise – that it would be obvious to provide an anti-microbial agent to any surface of the produce handling machine – is simply not supported. Moreover, Appellant notes that:

"...certain aspects of the equipment may nonetheless be difficult to clean in a manner suitable to remove all microbes. In particular, padding or water-absorbing elements of produce and food-handling equipment may be particularly difficult to clean. For example, if a closed or open-cell foam padding is cut or scraped in use, the cells or openings that are

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exposed provide dark/damp surfaces that are prone to the growth of bacteria and fungi. Accordingly, the present invention is directed toward improved materials that may be employed in produce and other food-handling equipment to reduce or eliminate the likelihood of the materials providing a location for the growth of microbes.” (Specification p. 1)

As to the Examiner’s alleged “fact” (underlined at p. 18 of Examiner’s Answer) Appellant respectfully notes that the Examiner nonetheless failed to establish the various elements recited in claims, and ignores the nature of the problem solved by aspects of the claimed invention. As the courts have said, a piecemeal reconstruction of the claimed invention in hindsight is not the standard for obviousness, and Appellant respectfully submits that the rejection of claim 13 is appropriately reversed.

Claim 14 (9<sup>th</sup> Question)

Claim 14, was rejected under 35 U.S.C. §103(a) over the combination of Moore (2,195,371) in view of Ross (3,651,922) and further in view of EITHER Zabron (5,906,269) OR JP6-246841 and further in view of Butterworth (3,449,779). Appellant respectfully submits that the rejection is improper, or in the alternative, fails to teach all of the limitations of the claims as set forth.

As previously noted in Appellant’s Brief, the Examiner seeks to “bolster” the rejection of claim 14 by further asserting a Dupont document (cited in the present application and noted in Appellant’s information disclosure), yet has not incorporated the document as a basis for the rejection. Accordingly, Appellant continues to urge, in addition to the noted distinctions, that the rejection of claim 14 is incomplete and that the Examiner failed to set forth, in the rejection, all of the “references” relied upon. Appellant respectfully urges that the rejection is therefore improper and respectfully requests that the Board direct the Examiner to withdraw or reverse the rejection of claim 14.

Claims 2 – 5, 23 and 25 (10<sup>th</sup> Question)

Claims 2-5 were rejected as being unpatentable under 35 U.S.C. §103(a) over the combination of Moore (2,195,371) in view of Ross (3,651,922) and further in view of EITHER Zabron (5,906,269) OR JP6-246841 and further in view of Newhall (2,534,205). Appellant respectfully incorporates herein the previously noted



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distinctions between claim 1, from which claims 2 - 5 depend, and the combination of Moore in view of Ross and Zabron or JP Abstract 6-246841.

Newhall is added to the arguable combination for its teachings relative to the structure of a water absorber having open-cell foam rollers and associated wringer rollers. The arguable substitution of Newhall's water absorber for the dryer of Moore does not result in any teaching or suggestion of rollers with the characteristics recited in claims 2 - 5. No specific teaching or statement as to the basis for the assertion of obviousness is found in the rejection set forth. Rather the rejection alleges the use of antimicrobial agents in absorbent rollers "would be obvious for the reasons stated above" yet fails to indicate where such a combination/modification is suggested. Appellant is apparently left to "guess" which reasons stated above would apply. Again, Appellant urges that such a rejection is incomplete, and further fails to set forth specific bases that would establish *prima facie* obviousness to which Appellant must respond.

Accordingly, the Appellant urges that claims 2 – 5 are improperly rejected and requests that the Board reverse this rejection as well.

#### **IV. CONCLUSION**

In light of the various arguments set forth above, Appellant respectfully submits that all of the questions presented should be answered in the negative, that all rejections set forth should be reversed, and that Appellant's pending claims should be indicated as allowable.

Reply Brief

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In the event that additional fees are required as a result of this submission, including fees for extensions of time, such fees should be charged to USPTO Deposit Account No. 50-2737 for Basch & Nickerson LLP.

Respectfully submitted,

 3/23/06

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